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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,933	11/06/2001	Diane Jones	026032-3670	5497
26371	7590	01/13/2004	EXAMINER	
FOLEY & LARDNER 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308			NELSON JR, MILTON	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/993,933

Applicant(s)

JONES ET AL.

Examiner

Milton Nelson, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 10-40 is/are pending in the application.
- 4a) Of the above claim(s) 10-26 and 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 27-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12. 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Newly submitted claims 10-26 and 40 are directed to an invention (fabric cover) that is independent or distinct from the invention (seat) originally claimed for the following reasons: The inventions are distinct, each from the other because of the following reasons:

Inventions I (seat) and II (fabric cover) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the subcombination requires at least that the seat cover be configured to be usable with a plurality of seat frames of different configuration, or that the seat cover comprises a plurality of yarns of different textures and a plurality of yarns of different colors. The subcombination has separate utility such as use as a blanket or floor mat.

Since applicant has received an action on the merits for the originally presented invention (seat), this invention has been constructively elected by original presentation

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for prosecution on the merits. Accordingly, claims 10-26 and 40 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Information Disclosure Statement***

The information referred to in the information disclosure statement filed October 27, 2003 has been considered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 27 and 33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation of the shrink yarn being selected such that the double jersey knit cover is sufficiently taut to support an occupant only after shrinking the shrink yarn represents new matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Lines 3-5 are grammatically vague. Note the recitation "placing over the seat frame the heat shrinkable double jersey knit cover comprises placing the heat shrinkable double jersey knit cover over the seatback portion of the seat frame". Clarification in the claim language is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 27-37 and 39, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Brooks et al (5235826). Note the seat frame (metal frame (col. 3, line 9) or core member (3)), suspension fabric (2), shrink yarn (col. 2, lines 15-16), double jersey construction (see col. 3, line 17), wherein the shrink yarn is selected such that prior to shrinking, the suspension fabric cover is less taut to the seat frame than after shrinking the shrink yarn (heat treatment can occur after knitting as indicated in col. 2, lines 9-11), and seatback cover (col. 2, line 2). Note that the product limitations of these claims are met by Lee et

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al (the claims are drawn to "a seat including a seat frame and cover"), therefor the process limitations have not been given patentable weight.

Claims 1, 4 and 27-39, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(a) as being anticipated by Lee et al (6279999). Note the seat frame (35 of 37), suspension fabric (38), shrink yarn (52 or 54), another yarn (the other of 52 or 54), wherein the shrink yarn is selected such that prior to shrinking, the suspension fabric cover is less taut to the seat frame than after shrinking the shrink yarn (col. 1, paragraph 3). Note that the product limitations of these claims are met by Lee et al (the claims are drawn to "a seat including a seat frame and cover"), therefor the process limitations have not been given patentable weight.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al (5235826) in view of Girard et al (5802882).

Brooks et al shows all claimed features of the instant invention with the exception of the another yarn being an air jet textured microfiber yarn.

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Girard et al discloses use of an air jet textured microfiber yarn in a fabric assembly.

It would have been obvious to one of ordinary skill in the pertinent art at the time of the instant invention to modify Brooks et al in view of the teachings of Girard et al by using an air jet textured microfiber yarn in the construction of the cover assembly. Incorporation of the microfiber yarn provides enhanced strength of the fabric construction.

Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al (5235826) in view of Blake (US2003/0056703).

Brooks et al shows all claimed structural features of the instant invention with the exception of the another yarn being a false twist yarn.

Blake discloses use of a false twist yarn in a layered fabric assembly.

It would have been obvious to one of ordinary skill in the pertinent art at the time of the instant invention to modify Brooks et al in view of the teachings of Blake by using a false twist yarn in the construction of the cover assembly. Incorporation of the false twist yarn provides enhanced strength of the fabric construction.

Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al (6279999) in view of Girard et al (5802882).

Lee et al shows all claimed features of the instant invention with the exception of the another yarn being an air jet textured microfiber yarn.

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Girard et al discloses use of an air jet textured microfiber yarn in a fabric assembly.

It would have been obvious to one of ordinary skill in the pertinent art at the time of the instant invention to modify Lee et al in view of the teachings of Girard et al by using an air jet textured microfiber yarn in the construction of the cover assembly. Incorporation of the microfiber yarn provides enhanced strength of the fabric construction.

Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al (6279999) in view of Blake (US2003/0056703).

Lee et al shows all claimed structural features of the instant invention with the exception of the another yarn being a false twist yarn.

Blake discloses use of a false twist yarn in a layered fabric assembly.

It would have been obvious to one of ordinary skill in the pertinent art at the time of the instant invention to modify Lee et al in view of the teachings of Blake by using a false twist yarn in the construction of the cover assembly. Incorporation of the false twist yarn provides enhanced strength of the fabric construction.

### ***Response to Amendment/Arguments***

Applicant's response filed October 17, 2003 has been fully considered.

Remaining issues are detailed in the above section. Arguments regarding the rejected



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claims are now moot in view of the new grounds of rejection. Claims 7-9 have been cancelled. Claims 10-26 and 40 are non-elected.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

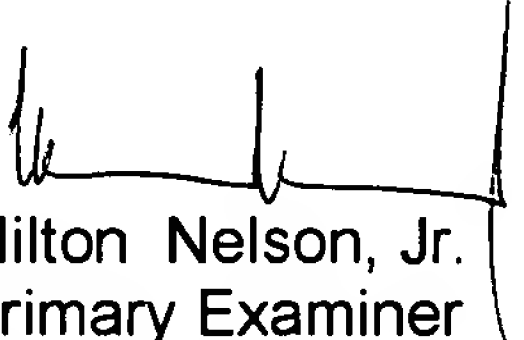
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is 7033082117. The examiner can normally be reached on Monday-Friday 5:30-3:00.

The fax phone numbers for the organization where this application or proceeding is assigned are 7033053597 for regular communications and 7033053597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 7033082168.



Milton Nelson, Jr.  
Primary Examiner  
Art Unit 3636

mn  
January 12, 2004